

Message Text

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ACTION EUR-25

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FM USMISSION BERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC PRIORITY 3368

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BERLIN 805

E.O. 11652: GDS

TAGS: PGOV, WB, GE, GW

SUBJECT: BRUECKMANN CASE

REF: A. BERLIN 778; B. STATE 99398

1. BRITISH MISSION HAS PREPARED FOLLOWING DRAFT ANSWER
TO KAMMERGERICHT'S REQUEST FOR OFFICIAL ALLIED POSITION ON
WHETHER IT MAY TAKE INTO CONSIDERATION FEDERAL CONSTITUTIONAL
COURT OPINION IN DECIDEING BRUECKMANN'S APPLICATION FOR RE-
HEARING OF KAMMERGERICHT JUDGMENT THAT SHE SHOULD BE RETURNED
FOR TRIAL TO GDR: BEGIN TEXT

"A. BY LETTER DATED 8 MAY 1974 THE OFFICE OF THE
SENATOR FOR JUSTICE TRANSMITTED TO THE COMPETENT BRITISH
AUTHORITIES IN BERLIN A DECREE DATED 6 MAY 1974 OF THE THIRD
SENAT OF THE BERLIN KAMMERGERICHT IN WHICH THAT SENAT RE-
QUESTED A CERTIFICATE FROM THE BRITISH COMMANDANT DETERMINING:

"...WHETHER THE TERMS AND INTENT OF BK/O(52935
OF 20 DECEMBER 1952 PERMIT THE JUDGMENT OF THE FEDERAL CONSTI-
TUTIONAL COURT OF 27 MARCH 1974 TO BE TAKEN INTO CONSIDERATION
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IN REACHING ADECISION ON THE APPLICATION TO REOPEN THE

PROCEEDINGS."

THIS REQUEST IS MADE UNDER THE PROVISIONS OF ARTICLE 3.2 OF ALLIED KOMMANDATURA LAW NO 7 AS AMENDED BY ALLIED KOMMANDATURA LAW NO 17.

"B. AFTER DUE CONSULTATION WITH THE COMMANDANTS OF THE AMERICAN AND FRENCH SECTORS OF BERLIN AND WITH THEIR AGREEMENT, I MAKE THE FOLLOWING DETERMINATION UNDER THE SAID ARTICLE 3.2 OF ALLIED KOMMANDATURA LAW NO 7 IN RELATION TO THE QUESTION REFERRED TO ME.

"C. IN ACCORDANCE WITH THE PROVISIONS OF BK/O(52)35 OF 20 SEPTEMBER 1952, AS CONFIRMED AND ELABORATED IN BK/L(67)10 OF 24 MAY 1967 AND BK/L(74)9 OF 12 MARCH 1974, THE FEDERAL CONSTITUTIONAL COURT DOES NOT HAVE JURISDICTION IN RELATION TO BERLIN AND, ACCORDINGLY, IS NOT COMPETENT TO REVIEW EITHER THE CONSTITUTIONALITY OF ACTS OF BERLIN AUTHORITIES OR THE CONSTITUTIONALITY OF BERLIN LAWS, INCLUDING LAWS TAKING OVER PROVISIONS OF FEDERAL LEGISLATION. THE REASONS FOR THE POSITION OF THE ALLIED KOMMANDATURA ON THE NON-COMPETENCE OF THE FEDERAL CONSTITUTIONAL COURT FOR BERLIN MATTERS ARE SET OUT IN THE ABOVE MENTIONED DIRECTIVES AND EXPLAINED IN THE LETTER DATED 29 APRIL 1974 FROM THE CHAIRMAN DEPUTY COMMANDANT TO THE SENATOR FOR JUSTICE CONCERNING THIS CASE.

"D. THE PROVISIONS OF BK/O(52)35, BK/L(67)10 AND BK/L(74)9 DO NOT THEREFORE PERMIT THE BERLIN KAMMERGERICHT TO TAKE INTO CONSIDERATION THE JUDGMENT OF THE FEDERAL CONSTITUTIONAL COURT OF 27 MARCH 1974 IN REACHING ITS DECISION ON THE APPLICATION PRESENTLY BEFORE IT. END TEXT

2. BRITISH HAVE SAID THEY WILL WISH TO DISCUSS TEXT IN TRIPARTITE BONN FORUM. FRENCH LEGAL ADVISOR INDICATED HE MIGHT PREFER TO SEE TEXT REFER MORE EXPLICITLY TO POSITION TAKEN BY KARLSRUHE COURT AND TO STATE WITH MORE PRECISION GENERAL ALLIED CONCLUSIONS AS TO IMPROPRIETY OF ADVISORY OPINION CONCEPT. WHILE WE MIGHT HAVE PREPARED SHORTER RESPONSE, DRAFT DOES ANSWER LEGAL QUESTION POSED BY KAMMERGERICHT, CONFIDENTIAL

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AND MAKES CLEAR THAT ALLIED VIEW HAS GENERAL APPLICABILITY FOR ANY FUTURE BERLIN CASES IN WHICH KARLSRUHE COURT SEEKS TO GIVE ADVISORY OPINION. FRENCH LINE RUNS RICK, IN OUR VIEW, OF POLITICIZING ANSWER AND GIVING APPEARANCE OF ALLIED DEBATE WITH KARLSRUHE. WE THEREFORE RECOMMEND WE ACCEPT BRITISH DRAFT.

3. IN FURTHER DEVELOPMENTS, SENATOR FOR JUSTICE KORBER DEFLECTED

COMPLAINT MAY 9 BY CDU REPRESENTATIVE IN JUDICIARY COMMITTEE OF BERLIN HOUSE OF REPRESENTATIVES THAT KAMMERGERICHT REQUEST TO BRITISH DEMONSTRATES BERLIN COURTS ARE NOT INDEPENDENT. KORBER NOTED MATTER INVOLVES LONGSTANDING ALLIED RESERVATION. KORBER ALSO SUGGESTED POSSIBLE WAY OUT OF BRUECKMANN DILEMMA MAY BE PRESENTED BY DRAFT AMENDMENT TO INNER-GERMAN JUDICIAL AND ADMINISTRATIVE ASSISTANCE LAW CDU HAS INTRODUCED IN BUDESTAG. AMENDMENT WOULD PERMIT APPEALS FROM HIGHEST LAND COURT TO FEDERAL SUPREME COURT (BUNDESGERICHTSHOF). DRAFT LAW, WHICH IS PRESENTLY IN BUDESTAG'S JUDICIARY COMMITTEE, WOULD HAVE RETROACTIVE APPLICATION TO DECISIONS OF HIGHEST LAND COURT THAT HAVE NOT YET BEEN CARRIED OUT, WHICH WOULD FIT BRUECKMANN SITUATION IF LAW WERE PASSED BEFORE STRASBOURG HUMAN RIGHTS COMMISSION DISPOSES OF HER APPEAL. ALLIES HAVE, OF COURSE, ALWAYS ACCEPTED THAT FEDERAL SUPREME COURT, AS OPPOSED TO FEDERAL CONSTITUTIONAL COURT, CAN EXERCISE JURISDICTION IN BERLIN CASES.

4. DIE WELT REPORTS MAY 13 THAT BRUECKMANN LAWYER HAS INFORMED STRASBOURG COMMISSION THAT HIS CLIENT HAS BEEN ON HUNGER STRIKE SINCE MAY 6 AND HAS TOLD HIM "I DON'T KNOW IF I CAN ENDURE." THIS IS PRESUMABLY TACTIC TO EMPHASIZE POSSIBILITY THAT SHE WOULD COMMIT SUICIDE IF RETURNED TO GDR, WHICH IS ONE OF FACTORS KARLSRUHE SAID KAMMERGERICHT SHOULD CONSIDER.

5. REF B JUST RECEIVED. INSASMUCH AS DRAFT REPLY HAS ALREADY BEEN REFERRED TO BONN GROUP BY BRITISH, SUGGEST DEPARTMENT'S ADDITIONAL POINT BE INSERTED IN BONN.KLEIN

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